

United States District Court, Northern District of Illinois

(9)

Name of Assigned Judge or Magistrate Judge	James B. Moran	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	99 C 5312	DATE	8/3/2000
CASE TITLE	Michael Spivey vs. Jerry L. Sternes		

[In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

DOCKET ENTRY:

(1) Filed motion of [use listing in "Motion" box above.]

(2) Brief in support of motion due _____.

(3) Answer brief to motion due _____. Reply to answer brief due _____.

(4) Ruling/Hearing on _____ set for _____ at _____.

(5) Status hearing[held/continued to] [set for/re-set for] on _____ set for _____ at _____.

(6) Pretrial conference[held/continued to] [set for/re-set for] on _____ set for _____ at _____.

(7) Trial[set for/re-set for] on _____ at _____.

(8) [Bench/Jury trial] [Hearing] held/continued to _____ at _____.

(9) This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to]
 FRCP4(m) General Rule 21 FRCP41(a)(1) FRCP41(a)(2).

(10) [Other docket entry] Enter Memorandum Opinion and Order. Petitioner has now filed a motion for relief from judgment with respect to two issues. We deny this request.

(11) [For further detail see order attached to the original minute order.]

No notices required, advised in open court.		number of notices	Document Number
No notices required.		AUG - 7 2000	
Notices mailed by judge's staff.		date docketed	
Notified counsel by telephone.		docketing deputy initials	
Docketing to mail notices.			
Mail AO 450 form.			
Copy to judge/magistrate judge.			
WAH	courtroom deputy's initials	Date/time received in central Clerk's Office	mailing deputy initials
		ED-7 FILED FOR DOCKETING 00 AUG -4 AM 9:15	2b

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

MICHAEL SPIVEY,)
Petitioner,)
vs.) No. 99 C 5312
JERRY L. STERNES,)
Respondent.)

DOCKETED
AUG - 7 2000

MEMORANDUM OPINION AND ORDER

In two prior orders we denied Michael Spivey's petition for *habeas corpus* and granted in part his request for a certificate of appealability. See Spivey v. Hartwig, 2000 WL 1015935 (N.D. Ill. May, 22, 2000); 2000 WL 983609 (N.D. Ill. July 17, 2000). Petitioner has now filed a motion for relief from judgment with respect to two issues. We deny this request.

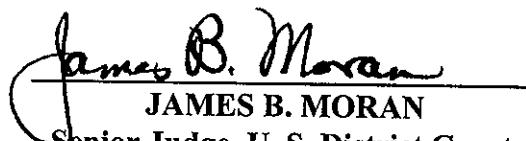
First, petitioner argues that we should excuse his failure to raise the physical abuse argument in state court. Contrary to his argument, we find that petitioner had personal knowledge of the alleged beating and that the related evidentiary support he relies on was known or discoverable at the time he filed for post-conviction relief. Furthermore, we find that petitioner has not established cause or prejudice for his procedural default of this issue.

Second, petitioner argues that procedural default of the issue regarding his allegedly unlawful arrest would result in a miscarriage of justice. Petitioner claims actual innocence and impugns the credibility of the officers and state's attorney who arrested and interrogated him. In support of his argument, petitioner cites to evidence of widespread

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police brutality in Chicago, the mistreatment of his co-defendants, and the fact that he did not draft or sign his own confession. We considered these factors in our prior order denying the *habeas* petition and do not revise that ruling. Petitioner has procedurally defaulted this ground for relief.

For these reasons, petitioner's motion for relief from judgment is denied.



JAMES B. MORAN
Senior Judge, U. S. District Court

August 3, 2000.